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BEFORE THE FEDERAL ELECTION COMMISSION

COMPLAINT

Edward J. Rowen

Rocklin, CA 95765

COMPLAINANT

VS.

MICHAEL BABICH

AUBURN, CA 95603,

RESPONDENT.

MUR No. 6256

Count 1: Failure to Designate Principal  
Campaign Committee. Failure to File  
Statement of Candidacy.

11 CFR 101.1(a)

Count 2: Failure to Designate Treasurer.  
Acceptance of Contributions in  
Absence of Treasurer.

11 CFR 102.7(a), (b) and (c)

Count 3: Failure to Establish Campaign  
Depository. Failure to Notify FEC of  
Campaign Depository. Failure to  
Deposit Funds into Federal Account.  
Commingling Funds.

11 CFR 103.1 - 103.3, 11 CFR 102.15

Count 4: Improper Federal Election Purpose  
Notification. Improper Disclaimer.

11 CFR 102.5(a)(7)(ii), (iii)

11 CFR 110.11(b)(1)

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**I. Factual Background**

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Upon personal knowledge, Edward J. Rowen (hereafter referred to as Complainant) states and alleges as follows:

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- A. Michael Babich (hereafter referred to as Respondent) is a resident of \_\_\_\_\_  
Auburn, California 95603.
- B. On or about December 22, 2009, Respondent registered an Internet domain name, "Babichforcongress.com," and caused a Web site to appear thereon. Respondent titled his Web Site "Michael Babich vs Tom McClintock for Congress, CA 4th district, babichforcongress, US Representative - Contact Us."
- C. Respondent further caused a banner to appear on his Web site, containing the words: "Michael Babich For Congress." Directly underneath the banner, Respondent refers to himself as, "A new and innovative candidate."
- D. Respondent's Web site contains no "disclaimer" notice. Specifically, Respondent does not identify the person(s) who paid for his Web site, nor the person(s), if applicable, who authorized the same. Screenshot of Respondent's Web site is attached hereto and incorporated as "Exhibit A."
- E. Respondent caused a link titled "Contribute" to prominently appear in the center of his Web site.
- F. Respondent's Web site includes a "Contribute" area, accessible by the general public at <http://babichforcongress.org/Contribute.html> or through the above-referenced link. Respondent urges financial support for his putative campaign, by stating: "The unfortunate fact is that funds are necessary to 'get the word out'. Any and all contributions are appreciated. At present, funds go towards a study committee for political insurrection of the Sierra Nevada region. Make checks payable to: Study Committee (sic) for Sierra Nevada Leadership (or simply write 'SCSNL')." Respondent fails to include any statement intimating that their contributions will be used in connection with federal elections or that they are subject to the limits and prohibitions of the Federal Election Campaign Act. Screenshot of "Contribute" area is attached hereto and incorporated as "Exhibit B."
- G. On or about January 27, 2010, Respondent participated in an interview with The Auburn Journal, a newspaper widely circulated within the 4th Congressional District of California. Within the resulting article, titled "Michael Babich challenges fellow GOP Tom McClintock for 4th District Republican Nomination," Respondent refers to his candidacy several times, stating specifically that: "Babich has started his run for office with a signature-gathering campaign." A copy of the above-referenced article is attached hereto and incorporated as "Exhibit C."

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- H. Upon information and belief, Complainant states that on or about February 8, 2009, in Roseville, California, Respondent was witnessed personally distributing printed campaign material, referring to Respondent as "candidate." Material distributed included no disclaimer ~~therein~~. Copy of material distributed is attached hereto and incorporated as "Exhibit D."

## II. Legal Analysis

### **COUNT 1: Failure to Designate Principal Campaign Committee. Failure to File Statement of Candidacy. 11 CFR 101.1 (a).**

Registration once an individual becomes a federal candidate is a basic requirement set forth in 11 CFR 101.1(a). Section 101.1(a) requires the designation of a principal campaign committee by executing and filing the Statement of Candidacy (FEC Form 2) or by filing a letter containing the same information as Form 2 within 15 days of becoming a candidate.

Federal regulations differentiate between individuals "testing the waters," who are not required to comply with Section 101.1(a) and actual candidates for whom compliance is mandatory. 11 CFR 100.72(b) sets out several examples to determine when an individual "testing the water" has become a candidate. Specifically a candidacy is formed when:

- The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office. (11 CFR 100.72(b)(3))
- The individual conducts activities in close proximity to the election or over a protracted period of time. (11 CFR 100.72(b)(4))
- The individual has taken action to qualify for the ballot under State law. (11 CFR 100.72 (b)(5))

Here, Respondent not only refers to himself as a "candidate" on his Web site, but has specifically referred to himself as such in at least one newspaper interview. Further, Respondent admits in the same interview, conducted on or about January 27, 2010, that he has been gathering signatures to place his name on the ballot, as prescribed by California election law. Finally, complainant caused the printing of campaign material and has distributed the same to voters. Despite the foregoing, Respondent has not fulfilled any registration requirement to which he is subject by 11 CFR 101.1(a).

### **COUNT 2: Failure to Designate Treasurer. Acceptance of Contributions in Absence of Treasurer. 11 CFR 102.7 (a)(b) and (c).**

Without exception, 11 CFR 102.7(a) requires every political committee to designate a treasurer at the time such committee files a Statement of Organization. Further, 11 CFR 102.7(b) forbids the acceptance of contributions by candidates/committees during such time that the office of treasurer is vacant.

Here, Respondent has designated neither a principal campaign committee nor a treasurer. While Complainant avers no knowledge of contributions accepted by Respondent (Respondent has not filed any reports with the FEC), Respondent clearly solicits financial support for his putative campaign on his Web site. (See Complainant's Exhibit B). Complainant submits that such solicitation alone is in contravention to 11 CFR 102.7(b) as it is conducted with intent clearly stated by Respondent to receive contributions.

**COUNT 3: Failure to Establish Campaign Depository. Failure to Notify FEC of Campaign Depository. Failure to Deposit Funds into Federal Account. Commingling Funds. 11 CFR 103.1 - 103.3, 11 CFR 102.15.**

An elementary requirement of federal candidates/committees is to designate at least one separate checking account for Federal fundraising purposes and notify the FEC of such designation. Further, all contributions raised by a federal candidate/committee is to be deposited into an account designated in the manner set forth above. Lastly, 11 CFR 102.15 prohibits political committees from commingling of committee funds with the funds of any other entity.

Here, Respondent not only failed to establish a separate deposit account for the contributions he solicits on his Web site, but Respondent actively requests that such funds be made payable to "Study Committee (sic) for Sierra Nevada Leadership," which does not constitute an entity prescribed by 11 CFR 103.2.

**COUNT 4: Improper Federal Election Purpose Notification. 11 CFR 102.5(a)(2)(ii) and (iii). Improper Disclaimer 11 CFR 110.11(b)(1).**

Within any fundraising solicitation, Federal committees must inform donors that their contributions will be used in connection with federal elections or that they are subject to the limits and prohibitions of the Act. Respondent has omitted any such notification from the "Contribute" section of his Web site.

11 CFR 110.11 (b)(1) requires each candidate/committee, which makes available to the general public a communication, to identify who paid for such communication through a clear and conspicuous disclaimer. Respondent failed to include the same on his Web site as well as on printed campaign material hereto attached.

**III. Conclusion**

Given Respondent's blatant disregard of his duties as candidate for Federal office, Complainant respectfully requests that the Commission find that Respondent willfully, intentionally, and knowingly violated Federal elections regulations as stated and alleged above.

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Complainant further requests that the Commission exercise its power under 26 U.S.C. §9040(c) to petition the appropriate U.S. District Court for injunctive relief to implement and enforce the provisions of above-cited regulations with regards to Respondent.

Respectfully submitted,

  
Edward Rowen

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# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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State of California

County of PLACER

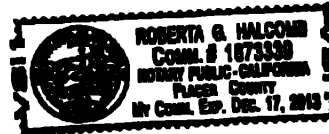
On FEBRUARY 15, 2010 before me, Roberta G. Halcomb, Notary Public,  
(Here insert name and title of the officer)

personally appeared Edward Joseph Rowen

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
Roberta G. Halcomb  
Signature of Notary Public



(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they - is/are) or stating the correct form. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ◆ Additional information is not required but could help to ensure this acknowledgment is undisturbed or attached to a different document.
  - ◆ Indicate title or type of attached document, number of pages and date.
  - ◆ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

### DESCRIPTION OF THE ATTACHED DOCUMENT

Federal Election Commission App  
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 5 Document Date 2/15/2010

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)  
☐ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

Dr. Dr. The Army Reserve 2000-01

Dr. Dr. The Army Reserve 2000-01

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Michael Babich  
Colonel, US Army Reserve (Retired)

Dr. Dr. The Army Reserve 2000-01

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- Status and individual rights enforcement (9th and 10th Amendments)
- Job creation without taxation
- Water and energy - No Arizona Dam needed



Dr. Dr. The Army Reserve 2000-01

Do Not Write, Stamp, or Sign Here

Return to: Michael Babich, 12345 Main St., Suite 100, San Francisco, CA 94105

For more information, call 1-800-555-1234



# Michael Babich

for Congress
















**Contribute**

The information on this card is necessary to "get the word out". Any and all contributions are appreciated. At present, funds go towards a study committee for political reform of the House of Representatives.

Make checks payable to: Study Committee for House Members Leadership (or simply write "SCHEML")

Mail to: SCHEML  
c/o Michael Babich  
12345 Main Street, Suite 100  
San Francisco, CA 94105

Or send them to the Committee on House Reform

Name	Amount	Source	Contribution	Signature	Comments
					
					
					
					
					
					
					
					
					
					
					
					
					
					
					

Donor's Signature: \_\_\_\_\_



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## Michael Babich challenges fellow GOP Tom McClintock for 4th District Republican nomination

By Gus Thomson, Journal Staff Writer



Michael Babich

Admitting he's on a David vs. Goliath-type election quest, Republican Michael Babich of Auburn is mounting an early primary challenge against 4th District U.S. Rep. Tom McClintock, R-Sacramento.

Babich, 54, said he believes in the potential of a grassroots effort to unseat McClintock — who is finishing his first two-year term after a lengthy career in the state Legislature representing Southern California's Ventura County area.

His campaign slogan is "We can do better."

Babich, a 10-year Auburn resident has a PhD in biomedical sciences from the University of Kentucky and returned to California to help develop a biopharma start-up company.

Since 2001, Babich has served as vice president of Mission Therapeutics — formerly Immvalix — to develop cancer treatments and diagnostics.

Babich cites his real-world experiences as major pluses as he takes on an incumbent who soundly defeated opponent Doug Ose in the 2008 Republican primary and then squeaked by Democratic Party candidate Charlie Brown in the subsequent congressional election.

"I feel we don't hire somebody to vote yay or nay or necessarily agree with them," Babich said. "We hire them to get a little more creative. Today we have a group in office devoid of ideas."

Babich also pointed to his 30 years on active duty in the U.S. Army Reserve, where he rose to the rank of colonel. He cited his work as a professor at the University of Illinois and current faculty appointment with the University of California, Davis and his work as a vocational college instructor at both Sierra College and Heald College.

"I've had 54 years of training," Babich said. "It's the experience that the framers of the Constitution its elected officials to have."

A self-described "open-minded conservative," Babich has been married for 29 years. He and his wife, Lisa have a son, Joshua, and a daughter, Erin. Both attend UC Davis.

Babich has started his run for office with a signature-gathering campaign. He said he's never run for office before but that grassroots campaigns have worked in similar situations in recent elections.

"It comes down to whether you like a career politician or someone with experience in the world," Babich said.

Placer County Supervisor Jim Holmes had been a possible McClintock challenger but said Tuesday that he will not run. Holmes said he gave it serious thought — with the thought process including switching from Republican registration to decline-to-state status — but eventually decided against a run against the incumbent.

The primary election is June 8. Candidate filing begins Feb. 16 and runs through March 12. Last day to register to vote is May 24.

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## The Babich for Congress campaign needs your signatures!

By Liberty\_Mike



Hell people of the 4th district,

Dr. Michael Babich of Auburn is running for Congress in 2010, challenging Congressman Tom McClintock for the Republican Party nomination. The Republican Party primaries take place on June 8th, 2010. In order for Michael Babich to get his name on the ballot, the campaign must collect 3,000 signatures of registered REPUBLICANS or INDEPENDENTS within California's 4th Congressional district. According to state rules, Babich is only allowed to collect signatures from Republicans and Independents within the district, since he is running as a member of the Republican Party. The campaign recently started the process of collecting signatures, but we need a lot more, and could use your help! A few of the members of the Babich campaign will be out collecting signatures for ballot access this Saturday, January 30th, 2010. We will be collecting signatures in the Best Buy/K-Mart shopping center off of Highway 49 and Bell St. We will be collecting signatures at 12pm.

for a couple of hours. If you are a registered Independent or Republican in the district, please give us your support by coming out and signing our ballot access form. Thanks for your time.

In the name of liberty,

Mike

Keywords

Michael Babich, Congress, 4th district

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### Comments

15 comments on this item

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On 1/29/10 at 08:33 AM, Liberty\_Mike wrote:  
By the way, here is a link to the Babich campaign web site.  
[www.babichforcongress.com](http://www.babichforcongress.com)  
Report inappropriate comments

On 1/29/10 at 11:17 AM, GEM\_Panzer wrote:  
a) Why is he running as a Republican?  
b) What has Tom McClintock done that justifies a primary war?  
c) What has Tom McClintock not done that he should of to justify a primary war?  
d) Would a primary war not take resources that would ultimately assist a liberal Democrat (posing as a moderate) to take the seat?

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- States and Individual rights enforcement (9th and 10th Amendments)
- Job creation without taxation
- Water and energy - NO Auburn Dam needed!

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